

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

BOIES SCHILLER FLEXNER LLP

Plaintiff,

-against-

TUTOR PERINI CORPORATION,

Defendant.

Index No. 05882-17

COMPLAINT

Plaintiff Boies Schiller Flexner LLP (“Plaintiff” or “BSF”), by its undersigned attorneys, for its complaint against Tutor Perini Corporation (“Defendant” or “Tutor Perini”), alleges as follows.

NATURE OF THE CASE

1. On April 22, 2014, Tutor Perini entered into a contract with BSF whereby BSF agreed to perform legal services on Tutor Perini’s behalf in an action against Banc of America Securities LLC (“BAS”) and related entities. The contract set forth BSF’s billing rates, and Tutor Perini agreed to pay BSF’s bills.

2. Over the next three years, BSF litigated on Tutor Perini’s behalf against BAS. The dispute concerned Tutor Perini’s purchases of auction-rate securities BAS in 2007 and 2008, and damages that Tutor Perini suffered when the auction-rate securities market collapsed.

3. On the eve of trial in 2015, a District Court in Boston granted summary judgment to the defendants; BSF appealed that judgment to the First Circuit and, based on the same evidence and record considered by the District Court, won a unanimous reversal. It was the only auction-rate securities case in the country to win a successful appeal. On the brink of trial in

June 2017, the parties reached a settlement whereby defendants agreed to pay Tutor Perini a sum that was more than double Tutor Perini's actual damages, covered all litigation fees, and was enough to provide interest on the losses. By all metrics, BSF's representation of Tutor Perini was thus a resounding success.

4. Throughout the representation, BSF sent Tutor Perini monthly billing statements, as required by their contract. Tutor Perini paid its bills, though often these payments were made months late. But once trial had been averted and the action settled—and Tutor Perini had recovered more than twice its actual damages—Tutor Perini failed to pay its final bills, an amount totaling \$845,677.37. When BSF demanded payment, Tutor Perini refused, forcing BSF to bring this action to recover payment for work that earned Tutor Perini a windfall settlement.

JURISDICTION AND VENUE

5. Jurisdiction is proper in Albany County because Boies Schiller Flexner LLP was and still is a foreign registered limited liability partnership with partners located in offices in Albany, New York, and the majority of the work at issue was performed in Albany County.

6. Tutor Perini was and still is a foreign registered corporation duly authorized to transact business within the State of New York.

7. Venue is proper in Albany County where the partnership has an office and where the majority of the work under the contract was performed.

FACTUAL ALLEGATIONS

8. On April 22, 2014, BSF and Tutor Perini entered into an agreement whereby BSF agreed to perform legal services on behalf of Tutor Perini in an action in the District of Massachusetts against Banc of America Securities LLC, n/k/a Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger, and Bank of America, N.A., 1:11-cv-10895-NMG.

9. On April 25, 2014, Tutor Perini signed an engagement letter (the “Contract”) with BSF that memorialized the terms of their agreement in writing.

10. Under the terms of the Contract, Tutor Perini “agree[d] to pay [BSF] for time spent on the Engagement.” The Contract identified the primary Partners who would work on the matter as Adam Shaw and George Carpinello, and listed their billing rates as \$890 and \$990. The Contract stated that “Associates and a Staff Attorney may also work on this case, and their billing rates range from \$430 to \$700 for an Associate and \$350 for a Staff Attorney. All rates are subject to increase at the end of 2015.”

11. The Contract also required Tutor Perini to “pay [BSF] all expenses reasonably incurred in connection with the Engagement, including, for example, for experts, computer research, document copying and management, transcripts, travel and lodging, filing fees, telephone/fax, and other expenses.”

12. The Contract provided that BSF would “send bills on a monthly basis, which are payable upon receipt, for any work performed in the course of [its] representation based on our hourly rate and any expenses reasonably incurred in connection with the Engagement.”

13. The Contract provided that arbitration would be available only for disputes that were not related to fees.

14. The Contract informed Tutor Perini that it might have the right to arbitrate a dispute regarding fees under Part 137 of the Rules of the Chief Administrator of the Courts.

15. Part 137 of the Rules of the Chief Administrator of the Courts provides that arbitration is only mandatory for fee disputes between \$1,000 and \$50,000. N.Y. Comp. Codes R. & Regs. tit. 22, § 137.1(b)(2). As described *infra*, the amount in dispute here is \$845,677.37.

16. Every month after the Contract was signed, BSF provided Tutor Perini with monthly bills reflecting its charges under the Contract.

17. From April 2014 through July 2017, BSF zealously represented Tutor Perini in the action against Banc of America Securities.

18. Tutor Perini's action underwent years of discovery, including the production and review of hundreds of thousands of documents, depositions of more than two dozen witnesses, and frequent motion practice.

19. The parties filed cross-motions for summary judgment in May 2015. On August 12, 2015, the District of Massachusetts granted defendants' motion for summary judgment and denied plaintiff's motion. The District of Massachusetts entered judgment on defendants' behalf on August 12, 2015.

20. Thereafter, BSF pursued an appeal on Tutor Perini's behalf in the First Circuit Court of Appeals. Oral argument on the appeal was conducted on July 27, 2016. On November 21, 2016, the First Circuit Court of Appeals reversed the grant of summary judgment in part and remanded the case to the District of Massachusetts.

21. On February 14, 2016, the District of Massachusetts allowed defendants to submit summary judgment briefs on undecided issues, and set a trial date for June 19, 2017.

22. BSF opposed defendants' summary judgment motion on Tutor Perini's behalf and simultaneously prepared for trial. In accord with the terms of the Contract, BSF continued to submit monthly bills to Tutor Perini for those legal services.

23. Throughout their three-year relationship under the Contract, Tutor Perini paid BSF's bills—although it often tendered payment several months late—until the end of 2016.

24. On December 15, 2016, BSF sent Tutor Perini a bill for \$7,911.99. Tutor Perini neither paid that bill nor notified BSF that it was challenging any portion of that bill.

25. On January 11, 2017, BSF sent Tutor Perini a bill for \$38,220.59. Tutor Perini paid that bill.

26. On February 16, 2017, BSF sent Tutor Perini a bill for \$48,576.92. Tutor Perini neither paid that bill nor notified BSF that it was challenging any portion of that bill.

27. On March 31, 2017, BSF sent Tutor Perini a bill for \$133,660.01. Tutor Perini neither paid that bill nor notified BSF that it was challenging any portion of that bill.

28. On April 14, 2017, BSF sent Tutor Perini a bill for \$164,378.08. Tutor Perini neither paid that bill nor notified BSF that it was challenging any portion of that bill.

29. On May 11, 2017, BSF sent Tutor Perini a bill for \$169,570.58. Tutor Perini neither paid that bill nor notified BSF that it was challenging any portion of that bill.

30. On July 21, 2017, BSF sent Tutor Perini a bill for \$321,579.79. Tutor Perini neither paid that bill nor notified BSF that it was challenging any portion of that bill.

31. Together, these bills equal \$845,677.37 in unpaid charges that Tutor Perini had promised to pay under the Contract.

32. When BSF demanded that Tutor Perini pay these bills under the terms of the Contract, Tutor Perini refused, and said that the terms of that Contract were no longer in force.

33. Tutor Perini accepted BSF's bills described in paragraphs 24 through 31 as correct and has never questioned the necessity of the work performed, the quality of that work, the time billed for that work, or the rates charged for that work.

FIRST CAUSE OF ACTION
(Breach of Contract)

34. Plaintiff repeats and incorporates the statements of paragraphs 1 through 33 as if fully set forth herein.

35. Tutor Perini and BSF entered into a contract on April 22, 2014, referred to above as the Contract, that required Tutor Perini to pay BSF for the legal services that BSF performed on Tutor Perini's behalf.

36. BSF has at all times complied with the Contract and continues to comply with the Contract.

37. Tutor Perini's actions described *supra* have breached the Contract.

38. BSF has been damaged by Tutor Perini's breach of contract in the amount of \$845,677.37, and is entitled to statutory interest at the rate of 9% from the date of the breach, pursuant to N.Y. C.P.L.R. §§ 5001(a), 5004.

SECOND CAUSE OF ACTION
(Account Stated)

39. Plaintiff repeats and incorporates the statements of paragraphs 1 through 38 as if fully set forth herein.

40. Plaintiff delivered an account stated in the form of bills described *supra* to Tutor Perini for legal work that Plaintiff performed on Tutor Perini's behalf.

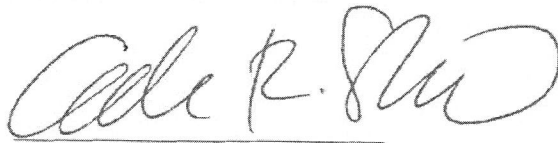
41. Tutor Perini agreed to pay these bills, accepted these bills as correct, and did not object to these bills within a reasonable time.

42. BSF thus seeks to recover damages in the amount of \$845,677.37 in accord with the account stated. BSF is also entitled to statutory interest at the rate of 9% from the date of each account stated, pursuant to N.Y. C.P.L.R. §§ 5001(a), 5004.

Dated: September 19, 2017

BOIES SCHILLER FLEXNER LLP

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